

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

661

In the
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

United States Court of Appeals
for the District of Columbia Circuit

NO. 23, 014

REC FILED JUL 28 1969

Nathan J. Paulson
CLERK

Randall E. Sebold, Sr., Appellee,

v.

Irene H. Sebold, Appellant.

On Appeal From a Judgment of the District Court for the
District of Columbia

APPENDIX

Harvey Rosenberg
1001 Spring Street, Suite 124
Silver Spring, Maryland 20910
Attorney for Appellant

TABLE OF CONTENTS

Docket Entries	1
Complaint for Declaratory Judgment To Establish Title to Real Property	3
Answer and Counterclaim	5
Order dated January 22, 1969	8
Consent Order	10
Decree A Vinculo Matrimonii	11
Proceedings	13
Witnesses:	
Randall E. Sebold	14
(Cross)	15
Ramona L. Wiggington	17
Irene H. Sebold	21
(Cross)	27

CIV DOCKET

United States District Court for the District of Columbia

PARTIES		NUMBER
RANDALL E. SEROLD, SR.		746-68
VS.		ACTION FOR
IRENE H. SEROLD		DECLARATORY JUDGMENT TO ESTABLISH TITLE TO REAL PROPERTY
		TAXED COSTS
		Atty.
		Marshal
		Clerk
		Witnesses
		Depositions
		Examiner
		Ct. Appls.
		Total

DATE	PROCEEDINGS
	Deposit for cost by
Mar. 25	Complaint, appearance filed
Mar. 25	Summons, copies (1) and copies (1) of Complaint issued ser, 4/1/68
Apr. 15	Answer of deft., to complaint; counterclaim; exhibit; c/m 4/12/68 appearance of Harvey Rosenberg. filed
Apr. 17	Reply of plfff. to counterclaim; c/m 4/16/68. filed
May 2	Certificate of readiness by plaintiff; c/m 5/1/68. filed
Nov. 14	Appearance of Stanton J. Gildenhorn co-counsel for deft. AC/V filed
Nov. 14	Pretrial Examiner
Nov. 18	List of witnesses by deft.; c/m 11/15/68. filed
Nov. 21	Notice by deft. of intent to rely on foreign law; c/m 11/10/68. filed
Jan 3	Hearing begun; resited to January 6, 1969. (Rep: Simon Farks, Jr.) Holtzoff, J.
Jan. 6	Hearing resumed; resited to January 7, 1969. (Rep. Simon Farks, Jr.) Holtzoff, J.

[Caption Omitted in Printing]

COMPLAINT FOR DECLARATORY
JUDGMENT TO ESTABLISH TITLE
TO REAL PROPERTY

1. This is a civil action brought under Title 28, Section 2201, United States Code; Title 11, Section 521, District of Columbia Code (1961); and other applicable statutes as well as the general equity powers of this Court.
2. Plaintiff and defendant were formerly husband and wife who were divorced in September, 1967, by the Circuit Court for Montgomery County, Maryland, Equity No. 32479.
3. On the dates stated hereinafter, and while plaintiff and defendant were man and wife, plaintiff purchased the following dwelling houses all located within the District of Columbia: 435 New Jersey Avenue, S.E., purchased May 16, 1950; 1203 C Street, S.E., purchased March 6, 1951; 114 11th Street, S.E., purchased March 23, 1955; and 431 7th Street, S.E., purchased May 13, 1950.
4. Although plaintiff purchased the aforesaid properties solely from his own funds plaintiff designated that title to said properties be in his and the defendant's joint names as tenants by the entireties. However, from the time said properties were purchased, plaintiff has had the sole responsibility for keeping them rented, collecting rents, making mortgage payments, paying taxes and other bills, and maintaining the dwellings in reasonable repair.
5. Although a property settlement was entered into by the parties hereto and was made a part of the final divorce decree granted to the parties by the Circuit Court for Montgomery County, Maryland, Equity No. 32479, said decree does not specifically require the defendant to convey

title to the aforesaid properties to the plaintiff. However, at the hearings relating to the defendant's claim for maintenance and support it was presumed by the parties that the income from the aforesaid dwellings belonged to the plaintiff and this factor was taken into account in arriving at a determination of the amount of alimony and other benefits to be conferred on the defendant herein. Furthermore, in the final decree entered in the divorce action hereinabove mentioned, the defendant expressly dismisses her claim for a division of the above real property.

6. The dwelling houses which are the subject of this Complaint are old and unrestored and they presently altogether throw off a net income after mortgage payments, but before depreciation, of between \$1,200.00 and \$1,800.00 per year. The said houses are in need of improvement and/or restoration. In order to accomplish such improvement plaintiff must cause the dwellings to be vacated, arrange for financing, enter into contracts, etc. Plaintiff is unable to initiate such acts until title is established in his name.

WHEREFORE, the above premises considered, plaintiff prays as follows:-

1. That the Court declare that the real property which is the subject of this Complaint is the sole property of the plaintiff herein;
2. That the Court order the defendant to convey title to the said real property to the plaintiff herein; and
3. For such other and further relief as to the Court may seem just and equitable in the premises.

S/
 RANDALL E. SEBOLD, SR.
 1511 K Street, N.W.
 Washington, D.C. 20005

DISTRICT OF COLUMBIA, SS:

RANDALL E. SEBOLD, SR., after first being sworn on oath, deposes and says that he has read the foregoing Complaint by his hand subscribed, and to the best of his knowledge and belief the matters and facts recited therein are true and correct.

S/

RANDALL E. SEBOLD, SR.

SUBSCRIBED AND SWORN TO BEFORE ME THIS 22 DAY OF MARCH, 1968.

S/

NOTARY PUBLIC

2/

Eager B. May
1000 Vermont Avenue, N.W.
Suite 500
Washington, D.C. 20005
Re7-0502
Attorney for plaintiff

[Caption Omitted in Printing]

A N S W E R

FIRST DEFENSE

Service on the defendant was defective.

SECOND DEFENSE

The complaint fails to state a cause of action for which relief can be granted.

THIRD DEFENSE

The jurisdiction of this Court is denied.

FOURTH DEFENSE

1. Denied.
2. Admitted.
3. Denied in that both parties made the aforesaid purchases.
4. Denied.
5. Denied.
6. Denied.

WHEREFORE, the defendant moves that this declaratory judgment suit be dismissed.

COUNTERCLAIM

1. Counter-plaintiff Irene H. Sebold was divorced from the counter-defendant. A copy of Decree a Vinculo Matrimonii is attached hereto and made a part hereof.
2. The counter-plaintiff has contributed not only money but has worked on the property involved herein.
3. All of said property is being rented and the counter-defendant has collected the rent and used same for his own purposes refusing to account to counter-plaintiff for her share of said money.
4. Counter-defendant has used rental income from said property to buy certain stocks and other things of value. Counter-plaintiff claims

a one-half interest in said items since one half of the money used to purchase said stock and/or houses belonged to counter-plaintiff.

5. Counter-plaintiff has asked for an accounting all to no avail.

WHEREFORE, counter-plaintiff demands an accounting from counter-defendant for all money belonging to counter-plaintiff including profits realized from the use of counter-plaintiff's funds.

Irene H. Sebold

STATE OF MARYLAND :

ss:

COUNTY OF :

IRENE H. SEBOLD, after first being sworn on oath, deposes and says that she has read the foregoing Answer and Counterclaim by her subscribed, and to the best of her knowledge, information and belief the answers and facts stated therein are true and correct.

Irene H. Sebold

[Certificate of Service Omitted in Printing]

[Caption Omitted in Printing]

FILED

FEB 3 1969

ORDER

Upon consideration of the Complaint herein to establish title in the plaintiff to the ~~whole~~ ^{Property} of certain real estate ~~here-~~
~~before titled in the joint names~~ ^{held jointly by} of the plaintiff and defendant
 as tenants by the entireties^y, and of the testimony and evidence adduced in open court, and the arguments of counsel for the respective parties, and upon consideration of defendant's Counterclaim, and the evidence and testimony thereon adduced in open court, as well as the arguments of counsel, it is this 22 day of January, 1969,

ADJUDGED, ORDERED AND DECREED, that the plaintiff herein be and is hereby vested with legal and equitable title, in fee simple, in and to the whole of Lot 27, Square 876, with improvements thereon known as 431 7th Street, S.E., Washington, D.C., and the defendant be and is hereby divested of all right, title and interest, both legal and equitable, in the aforesaid realty;

ADJUDGED, ORDERED AND DECREED, that the plaintiff herein be and is hereby vested with legal and equitable title, in fee simple, in and to the whole of Lot 70, Square 989, with improvements thereon known as 114 11th Street, S.E., Washington, D.C.; and the defendant be and is hereby divested of all right, title and interest, both legal and equitable in the aforesaid realty;

ADJUDGED, ORDERED AND DECREED, that the plaintiff herein ~~be~~ and is hereby vested with legal and equitable title, in fee simple, in and to the whole of Lot 41, Square 1009, with improvements thereon known as 1208 C Street, N.E., Washington, D.C., and the defendant ~~be~~ and is hereby divested of all right, title and interest, both legal and equitable in the aforesaid realty;

ADJUDGED, ORDERED AND DECREED, that the defendant-counterclaimant ~~be and is hereby awarded an accounting for~~ ^{is entitled to} one half of the net ~~rental~~ income from the above three parcels of real ~~estate~~ ^{property} as well as ~~an accounting for~~ one half of the net rental income from their jointly owned parcel of realty described as Lot 44, Square 693, with improvements thereon known as 425 New Jersey Avenue, S.E., Washington, D.C., for the period beginning September 13, 1967 and ending January 7, 1969, and it is further ordered that plaintiff ~~shall be and is~~ hereby ^{entitled} authorized to ~~take as~~ a credit against any sum that ^{may} be owing to the defendant-counterclaimant ~~under this accounting~~ the amount of his payments on the plaintiff and defendant's jointly owned realty located at 5206 Belvoir Drive, Glen-Mar Park, Maryland; ^{and that this cause is hereby referred to the} ~~The defendant-counterclaimant be and is~~ ^{Creditor of this Court to it for an accounting proceeding} hereby authorized to submit ~~the matter to the Court Auditor~~ ^{accordingly} ~~for an accounting if the parties cannot agree on the accounting.~~

Alexander Stollhoff
J U D G E

[Caption Omitted in Printing]

CONSENT ORDER

Upon consideration of the pleadings filed herein, and it appearing to the Court that all parties consent hereto, it is by the Circuit Court for Montgomery County, Maryland, sitting in equity, this ____ day of October, 1935,

ORDERED:

1. That the Defendant, Randall E. Sebold, Sr., will pay to the plaintiff, Irene E. Sebold, the sum of Three Hundred Dollars (\$300.00) per month as separate maintenance, beginning the first day of November, 1935.
2. That the Defendant will make the house payments as they fall due on the property located at 5206 Belvoir Drive, Glen Har Park, Montgomery County, Maryland; in addition thereto, the Defendant shall pay the real estate taxes on said property and maintain fire and extended coverage insurance on said premises.
3. That the Defendant will pay the heat, gas, electric and water bills as they become due on the premises located at 5206 Belvoir Drive.
4. That the Defendant will maintain a hospitalization insurance policy in which the plaintiff-wife is named as a dependent.
5. That the Defendant will pay the sum of One Hundred Dollars (\$100.00) to Dr. Ann Keel for services rendered.
6. That the Defendant will pay the sum of One Hundred Forty-Two Dollars and 50/100 (\$142.50) to the Washington Clinic for medical services rendered.
7. That the Defendant will transfer title of the 1933 Valiant automobile now registered in his name to the plaintiff.
8. That the Defendant will pay to Harvey Rosenberg, Esq., attorney for

the plaintiff, the sum of Seven Hundred Fifty Dollars (\$750.00) by way of counsel fees for the present litigation.

9. That the Defendant will pay the Court costs of this proceeding.

Thomas M. Anderson, Judge

CONSENT:

Irene H. Sebold
Irene H. Sebold, Plaintiff

Randall E. Sebold Sr.
Randall E. Sebold, Sr., Defendant

Harvey Rosenberg
Harvey Rosenberg,
Attorney for Plaintiff

Thomas E. Lawrence
Thomas E. Lawrence
Attorney for the Defendant

[Caption Omitted in Printing]

DECREE A VINCULO MATRIMONII

THIS CAUSE, having come on for hearing on the 21st day of August, 1967, the parties being represented by counsel and testimony having been taken on the Claimant's Bill of Complaint for Absolute Divorce, and the Respondent's Cross-Bill, and the Respondent having voluntarily withdrawn her prayers for an accounting and a division of real property, and the parties having agreed that Paragraphs 1, 2, 3 and 4 of the Consent Order entered in Equity No. 29716, remain in full force and effect, *and the Court having announced its findings in Open Court,* it is by the Circuit Court for Montgomery County, Maryland, sitting in equity, this 13th day of September, 1967,

ORDERED: *and Decreed:*

1. That the Bill of Complaint for Absolute Divorce be *the defendant and counter-Plaintiff, Irene H. Sebold, Sr. and she hereby is*

dismissed and that the ~~Cross-Bill~~ ^{from the Plaintiff and now - Defendant, Russell E. Seibel, Sr.} awarding a divorce ~~a vinculo~~
matrimonii on the grounds of constructive desertion ~~be granted;~~

2. That Paragraphs numbered 1, 2, 3 and 4, contained in the Consent Order in Equity No. 29716, remain in full force and effect.

3. That the Claimant and Counter-Respondent will pay to Harvey Rosenberg, Esquire, attorney for the Respondent-Counter-claimant, the sum of \$500.00 by way of counsel fees.

4. That the Claimant will pay the costs of this proceeding.

John P. Moore
JUDGE

Seen:

Harvey Rosenberg

Harvey Rosenberg
Attorney for Respondent and Counter-claimant

Thomas B. Lawrence

Thomas B. Lawrence,
Attorney for Claimant and Counter-Respondent

True Copy Test

Howard M. Smith
Clerk

Howard M. Smith
Clerk

-18-

MR. ROSENBERG: Your Honor, it is my understanding and I may be in total error that once a divorce decree became effective it becomes tenants in common. They couldn't own it as tenants by the entirety. And under that theory she would be entitled to an accounting.

THE COURT: I think you are right, they did become tenants in common.

-21-

THE COURT: That was in connection with the divorce decree, was it not?

-22-

THE COURT: Well, do you agree with Mr. Rosenberg that upon the divorce decree becoming final the parties became tenants in common instead of tenants by the entirety? I am inclined to think he is right.

MR. MAY: In the sense that unless this Court adjusts the property --

THE COURT: No.

MR. MAY: I think that is correct too, Your Honor.

THE COURT: That makes it easier to make an adjustment, of course. Well, very well. You may proceed.

-25-

MR. ROSENBERG: This one, Your Honor, is under the point that under the married woman's property statute the husband can't assert exclusively the right to the rents and profits or divest the right of her share. Neither party has a separate estate. And that is what that case is to the point.

THE COURT: I think that is elementary. Anyway if they are tenants in common I suppose they have a right to share.

* * *

RANDALL E. SEBOLD

* * *

DIRECT EXAMINATION

BY MR. MAY:

* * *

-32-

Q Now, Mr. Sebold, was your wife working at this time?

-33-

A Not at this time, no. She last worked when she was pregnant with my son. She stopped working in the summer of 1943.

Q Does she ever work?

THE COURT: 1943?

THE WITNESS: Yes, Your Honor.

* * *

-48-

THE COURT: And it is the joint efforts of the two together that produces everything even though the money comes from the husband. I am old fashioned that way.

-86-

CROSS-EXAMINATION

BY MR. ROSENBERG:

-97-

Q In 1966 did you not withdraw from a joint savings account, \$6,400 which was in a former Northeast Building

-98- Association?

A No, counsel that is not true.

Q What association did you withdraw the money from?

A 1966, counsel, none.

Q '65, I am sorry.

A In '65, March 24, 1965, after the wife cleaned out my two operating checking accounts of \$2,350 I needed money to operate with and I had a joint account at the Metropolis Building and Loan on Capital Hill, 3d and Pennsylvania Avenue, S. E., so I went up to get that money to replace the money in the checking account and pay my taxes.

Q Did you take \$6,400 from that joint account?

A Approximately that is what was left.

-101- Q Did Mrs. Sebold give you the majority of her pay?

THE COURT: Now, what was your question?

BY MR. ROSENBERG:

Q Did Mrs. Sebold give you the majority of the money that she earned?

THE COURT: Well, majority doesn't mean very much.

Did she give you any of the money that she earned?

-105- Q Did Mrs. Sebold have boarders up in the house up until 1950 who paid money to her for keeping them in the house?

A Not quite that late, counsel. In the early
-106- years of our life we struggled for making ends meet and there was times that we would have, we had a three-bedroom house, one bedroom is very small and there were times that we would have somebody in there that paid us \$5 or \$8 a week.

-113- MR. ROSENBERG: Your Honor, I would like to move at this point to dismiss the Complaint of the Plaintiff on the testimony adduced hereto. They have not proven a prima facie case.

THE COURT: Motion denied.

RAMONA L. WIGGINGTON

* * *

DIRECT EXAMINATION

BY MR. ROSENBERG:

* * *

-114-
Q Mrs. Wiggington, did your mother work while you were young?

A Yes, she did. My mother worked when I was young and she worked up until she was about eight months pregnant with my brother.

Q When was your brother born, do you recall?

A Well, my brother was five years younger than I.

THE COURT: Well, we have enough on the record that it was 1943.

* * *

Q Did you see what your mother did with the money she received from the job she worked at?

A Well --

THE COURT: The answer is yes or no.

THE WITNESS: Yes.

BY MR. ROSENBERG:

Q And what happened to the money that she earned?

A My father handled all the money. She gave my father the monies that she had.

Q Was there any reason for this?

A The reason -- well, the reason being this is just sort of the agreement that they had. They worked together and when mother worked and made money she gave it to him because he was to put the money, he always said the money was to go for the family, that it was for their savings and for their investments and this is why she paid him the money because she always felt that he had a better head as far as business was concerned, out in the business world so she gave him everything.

-117- Q Now, Mrs. Wiggington, were there boarders in the house?

A Yes, there were boarders in the house until I was about eight or nine years old.

THE COURT: Were these boarders or roomers?

THE WITNESS: Is there a difference?

THE COURT: Oh, yes, a boarder is a person who takes --

THE WITNESS: Oh, they were paying guests. They lived there and they paid money to my mother.

THE COURT: No, just a minute. Just confine yourself to answering questions. There were roomers in the house until when?

-118-

THE COURT: So your testimony is that there were roomers in the house until about 1947?

THE WITNESS: You are correct, approximately right.

* * *

-119-

Q Now, do you know what your mother did with the money she received from the roomers?

A Well, this was given to my father. Mother lives on an appropriated amount of money but it was all hers given to my father.

* * *

-121-

Q Would you tell us what he said?

A The money was taken to go for investments. The monies were to go for their future together. It was for later. It was always for later.

* * *

Q Now, Mrs. Wiggington, did you ever see your mother help your father in the insurance business?

A Yes.

Q Will you tell how, when and how it was done?

A Well, at home mother always answered the telephone and handled all the insurance business in this respect and whenever clients would call for my father she would take messages for him and give the messages to him. Also -- you just want only the insurance business?

Q And the property.

A And on the properties more often than not my mother would rent the properties. I guess you could
 -122- classify her as a non-resident manager in that respect. She rented many of the properties right over the telephone itself.

MR. ROSENBERG: Did you want to say something, Your Honor.

THE COURT: You were asking whether she helped in the insurance business.

MR. ROSENBERG: In the insurance business and also the properties, Your Honor.

THE WITNESS: In fact even after their separation when people would call the house asking for my father because they did not know where he was or could not locate him she would handle the messages at that point and track my father down because she did not want the people to think that maybe my father was coming apart at the seams because of the domestic situation. She was always a very diplomatic person in this respect and extremely conscientious.

-126- Q Now, you have stated that your mother; and I will try to quote you, rented properties over the telephone?

A That is correct.

Q Did your mother ever show a tenant a property to your knowledge?

A Take the tenant out?

Q Yes.

A Not to my knowledge.

Q Did your mother describe the property including the rental, the terms of the lease and talk to --

A Oh, yes, she would interview over the telephone and talk to people and describe the properties on several occasions I can recall her saying, "Well, I rented such and such an apartment for your father today", for instance, I had asked her to come by the house or something or she would say I can't because there is an apartment for rent in the paper and therefore I must stay at home to answer the phone.

IRENE H. SEBOLD

DIRECT EXAMINATION

BY MR. ROSENBERG:

Q What is the date of the marriage, Mrs. Sebold?

A I think I was married in 1938.

Q Before the marriage, immediately before the marriage what did you do with the sums that you earned?

A Some of the funds that I earned before I was
-130- married --

A Part of it, part of the money I earned before I
was married I gave to Mr. Sebold.

THE COURT: Before you were married?

THE WITNESS: Before I was married.

THE COURT: For how long?

THE WITNESS: Maybe a year and a half.

BY MR. ROSENBERG:

Q And did that go into the checking account,
savings accounts?

A I don't recall what kind of account it went in.
-131- I gave it to Mr. Sebold. We were planning on getting married
for quite some time before we did get married.

Q Now, Mrs. Sebold, when after you were married
did you give Mr. Sebold your money too?

A After I was married I gave Mr. Sebold my money
every day.

Q Was that the tips you were talking about every
day?

A The main part of my earnings was tips.

Q And you gave those to Mr. Sebold?

A I gave those to Mr. Sebold.

Q Now, why did you give them to Mr. Sebold?

A Mr. Sebold took care of the money.

Q And that was the reason you did that?

A Yes.

Q Now, did there come a time when you bought a piece of property jointly together?

A We bought 319 - 34th Place.

Q And that is where you lived?

-132- Q Mrs. Sebold, that property was then sold, is that right?

A That property was sold.

Q And a note was given to you and Mr. Sebold which you gave to Mr. Sebold, which Mr. Sebold collected, is that right?

-133- Q What did you receive from the sale of the house?

A We put some of the money on 5206 Belvoir Drive.

Q That is the house you now live in?

A Yes, sir. The other money we took a second trust note on.

Q And who collected the money from the second trust note?

A Mr. Sebold.

Q And you never saw any of that money did you?

A No.

Q Now, did you have roomers or boarders in your house?

A I had roomers and boarders in my house at 826 Delafield Place, N. W., from the very first -- not the first three months of our marriage, we lived in an apartment then we leased a house.

Q What did you do with the money you received from roomers and boarders?

A I gave the money to Mr. Sebold.

THE COURT: Now, were these roomers or boarders?

THE WITNESS: Both.

BY MR. ROSENBERG:

Q When was the last time you had a roomer or a boarder in your house?

A When my son was about four years old.

Q What year was that, Mrs. Sebold?

THE COURT: When was that?

THE WITNESS: Between 1947 and '48.

-135-

Q Now, when your husband went into the insurance business do you recall that, Mrs. Sebold?

A Yes, sir.

Q Did you in any way help him?

A I did.

Q And will you tell this Court how you helped him?

A Mr. Sebold had what he called his home office in the house we lived in and I answered many insurance calls when he was not there and I called Johnson and Adams Insurance Company, I gave them the messages, I had them locate Mr. Sebold and call his clients. That was all.

Q Now, when it came to the apartments did you do anything with respect to the apartments that we have been talking about today?

A In respect to the apartments I took telephone messages in relation to complaints. I answered the telephone on ads when the apartments were for rent.

-136-

Q Did you describe the apartments?

A I described the apartments.

Q Did you ever take people out to see the apartments?

A I did not.

Q Now, Mrs. Sebold, did you -- I am sorry. Did you ever go to clean any of the apartments?

A I went to clean the apartments.

THE COURT: You went to do what?

MR. ROSENBERG: To clean the apartments,

Your Honor.

BY MR. ROSENBERG:

Q Did you ever clean any of these apartments?

A Yes.

Q Very often?

-137- Q Yes. Did you with respect to cleaning of the apartments, will you tell the Court how often and under what circumstances?

A The apartments were cleaned only when the tenant moved out.

THE COURT: The question is how often?

THE WITNESS: That is what I am trying to get at.

THE COURT: No. How often?

THE WITNESS: Three or four times a year.

THE COURT: Just a moment. Do your thinking silently and then answer the question.

THE WITNESS: I might clean apartments three or four times a year depending on whether we had a maid.

-138- Q Did you ever do any laundry work besides the pruning?

A If there was no one to cut the grass I would cut the grass. I sowed grass, I planted flowers and shrubbery on occasion.

CROSS-EXAMINATION

-139-

BY MR. MAY:

Q Mrs. Sebold, have you cleaned any houses within the last five years?

A Yes, sir.

Q How many times?

A I would say the year before we were divorced about three or four times that year.

THE COURT: You mean the year before the divorce?

THE WITNESS: Before we were separated, I am sorry.

Q Now, Mrs. Sebold, how many times did you clean the property known as 425 New Jersey Avenue, S.E.?

A I can't answer that question. During what period?

Q During the period of -- well, any period, at any time?

-140-

A How many times?

Q Yes.

A I have cleaned the property at least twelve or fifteen times.

Q You are testifying then that you cleaned the property at 425 New Jersey Avenue, S. E., at least twelve or fifteen times, is that correct?

A I have been there that many times working on the property.

-141- Q How many times did you clean or do other work at the property known as 114 - 11th Street, S. E.?

A I have been there, say, five or six times. These properties were leased for six months at a time. They were not cleaned often.

-179- MR. ROSENBERG: To the point that we own, that is when I say we I refer to my client, she had maintained her position of having in tenants in common because that is what she is now. There is no longer tenant by the entirety, but tenants in common on this property.

THE COURT: Well, is that also in the District of Columbia law, isn't it?

MR. ROSENBERG: Yes, it is, Your Honor.

THE COURT: In other words they are tenants in common of all the five properties, are they not?

MR. ROSENBERG: Yes, Your Honor, all of the five properties, that's right, Your Honor.

THE COURT: Well, is there any question about that, Mr. May? Do you concede? Don't address the Court from the other side of the room.

Do you agree that they are tenants in common now from the date of the divorce decree?

MR. MAY: I agree they are tenants in common not unless the Court rules otherwise.

-181-

THE COURT: Of course I want to see this. She is entitled to certain rights. She has lived with this man, they have lived together for years, they raised a family, their children are grown and she did her share. But I think that she has been treated pretty liberally. The tenancy by the entirety of the house in which she lives has not been disturbed. Her husband is paying all the payments on the house, that is the mortgage, taxes, and so on, he is paying for the utilities. In addition to that he is paying her \$300 a month for separate maintenance and also paying the premiums on the hospitalization insurance policy. Now, isn't that pretty liberal? She is entitled to liberal treatment but hasn't she been treated liberally.

-184-

THE COURT: Now, what is the significance according to your theory of the date of October 20, 1965? What is that date?

MR. ROSENBERG: That is the date they were formally separated.

MR. ROSENBERG: Just the testimony, Your Honor. Just the evidence of the Plaintiff in which the decree granting Mrs. Sebold separate maintenance. Now, it's obvious --

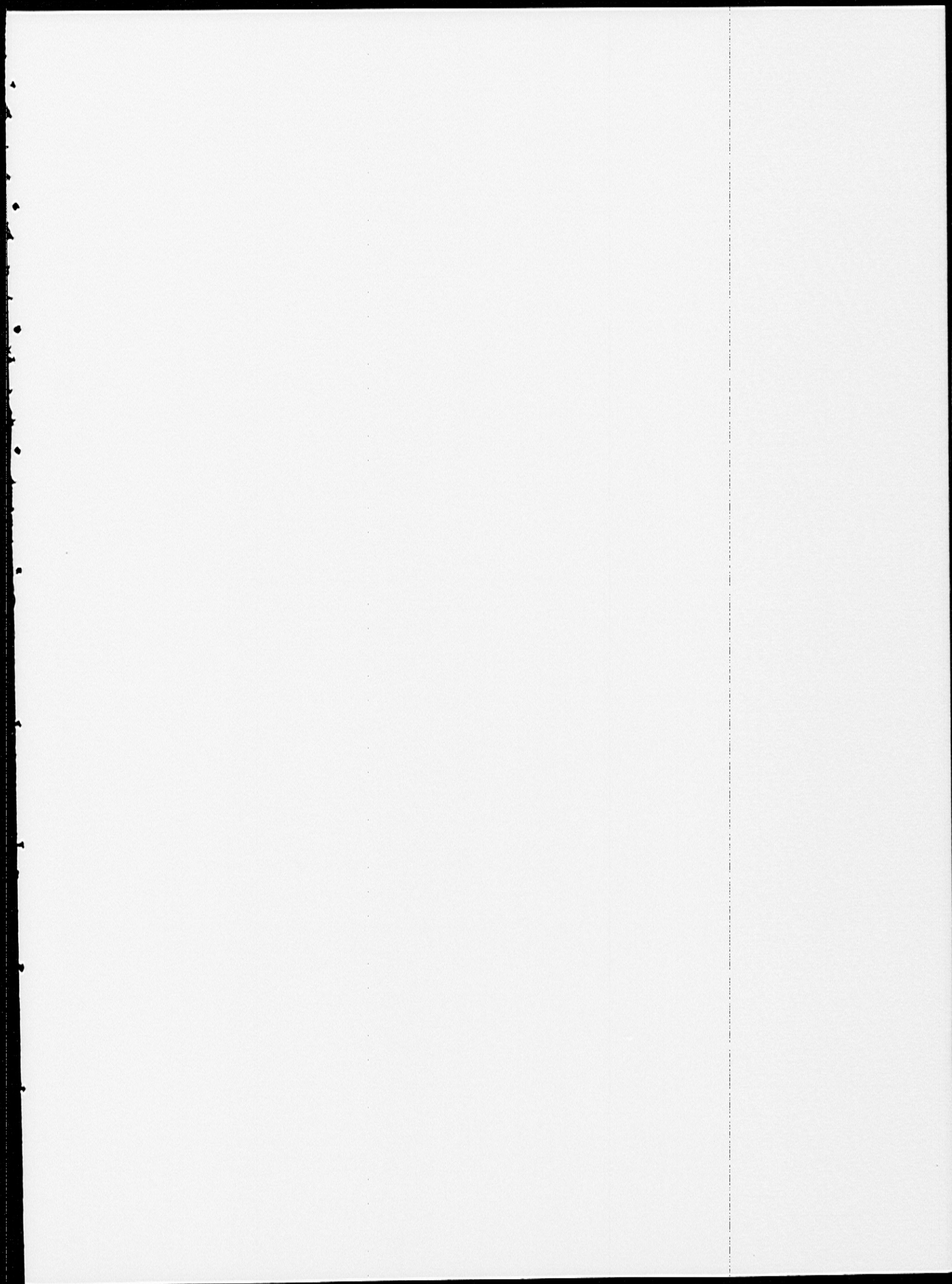
-193-

THE COURT: Your real stumbling block is the Schultz case. I would not have very much difficulty with this case if it wasn't for the decision of the Court of Appeals in the Schultz case. Now, do you wish to say anything more about the Schultz case. You probably have exhausted.

MR. MAY: I have looked at that case so I can't even read it correctly any more. I don't know the assumption. I don't know the facts. I don't agree with it but it is there and that is all I can say about it.

THE COURT: I know. You do not know whether I agree with it or not but it is binding on me.

MR. MAY: I know, Your Honor.



1-6 20

IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 23,014

RANDALL E. SEBOLD, SR.,
Appellee

v.

IRENE H. SEBOLD,
Appellant

*On Appeal from a Judgment of the United States
District Court for the District of Columbia*

SUPPLEMENTAL APPENDIX

United States Court of Appeals
for the District of Columbia Circuit

FILED OCT 20 1969

Nathan J. Paulson
CLERK

TABLE OF CONTENTS

Testimony of Randall E. Sebold	
(Direct Examination)	1
(Cross Examination)	21
Testimony of Ramona L. Wiggington	
(Direct Examination)	24
Testimony of Irene H. Sebold	
(Cross Examination)	26
Testimony of Marie Agnes Deese	
(Direct Examination)	27

SUPPLEMENTAL APPENDIX

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RANDALL SEBOLD,
Plaintiff

v.

IRENE H. SEBOLD,
Defendant

)
)
) Civil Action No. 746-68
)
)

[Excerpts from Transcript of Proceedings]

* * * * *

RANDALL E. SEBOLD
DIRECT EXAMINATION

* * * * *

[30] BY MR. MAY:

Q. Mr. Sebold, did there come a time that you purchased a property within the District of Columbia described as 425 New Jersey Avenue, S. E.? A. Yes.

Q. What were the circumstances of that purchase and when did it take place?

THE COURT: Oh, one question at a time.

[31] BY MR. MAY:

Q. When did the purchase take place, Mr. Sebold?

THE COURT: Well, now, that is stipulated, May 16, 1950. That is right in the pretrial order. There is no use wasting the Court's time to prove things in the pretrial order. Now the circumstances that is different. You may ask him about that.

THE WITNESS: The circumstances —

THE COURT: Just a moment. You ask your question.

BY MR. MAY:

Q. What were the circumstances under which you purchased this property? A. Well, I was looking for some extra income since after World War II I had lost considerable income by not having overtime and I needed more income to supplement and take care of the maintenance of my family, at that time which consisted of my wife and two children so I looked around for a piece of property which I thought I could manage and perhaps would show me some income for effort that I could put into the property since I did have some extra time I was just working one job in Government and I ran onto this piece of property on New Jersey Avenue, the address was 425 New Jersey Avenue, S. E. I saw they had a sign up on the building so I stopped by to see the owner after work about 5:30 in the evening. I learned from talking to them that they would take \$14,000 for the property. Well, after looking it over it looked to me like a piece of property that I could perform some maintenance on and maybe make some income on so I offered them \$13,000. Before the evening was over which was about 11:00 o'clock at night they agreed to accept my offer. They called their real estate broker. He brought a typewriter over to the house and wrote out the bill of sale and I made a \$500 down payment at that time. Some time later, approximately thirty days, it came up for settlement and on May 15, 1950, I made the balance of a down payment of \$7,000. This was from a loan that I made in order to make the down payment. The property owner had an existing first trust on the building which I assumed.

THE COURT: Now, what was the balance of the cash that you paid again?

THE WITNESS: I paid \$7,000 total down payment and the balance was in a remaining first trust assumed from the seller.

BY MR. MAY:

Q. Now, Mr. Sebold, was your wife working at this time? [33]

A. Not at this time, no. She last worked when she was pregnant with my son. She stopped working in the summer of 1943.

Q. Does she ever work?

THE COURT: 1943?

THE WITNESS: Yes, Your Honor.

BY MR. MAY:

Q. Did she ever work from 1943 until the time of your divorce?

A. She never worked out at business after 1943.

Q. Now, where did you get the funds to buy this property described at 425 New Jersey Avenue, S.E.? A. I took a part time job in 1945 with an insurance company to supplement my income in Government.

THE COURT: What was your Government position?

THE WITNESS: I was an administrative clerk, GS 7 at that time.

THE COURT: Where?

THE WITNESS: At the Corps of Engineers at Building T-7, Arlington, Virginia. At that time my salary in Government, I am a little vague on that, on what it was at that time. It was \$5,500 when I left Government in '51. I think it was around \$2,600 as best I can recall.

[34] BY MR. MAY:

Q. Now, how many units is this 425 New Jersey Avenue? A. The building at 425 New Jersey Avenue, S. E., has three separate units, ground floor and second floor.

Q. Are they rented? A. They are now occupied and rented furnished.

Q. And who furnished these units? A. I furnished the units, secured the decorations and continued to maintain them in a furnished condition.

Q. And who rented these units? A. I rent them and always have.

Q. Are there any vacancies occur? A. Oh, quite frequently since

they are furnished. I have frequent vacancies and consequently it does require a lot of my time to make necessary repairs between tenants, clean them up, decorate them and get them in order in order that I can offer them for rent another time.

Q. Now, again directing your attention to this property, did your wife in any way participate in the choosing or selecting of this property?

MR. ROSENBERG: Objection, Your Honor.

[35] THE WITNESS: No, she did not.

MR. ROSENBERG: I think he is asking the witness to make a conclusion. He is asking the witness to make a conclusory remark.

THE COURT: I know what he is asking the witness. What is the ground of your objection?

MR. ROSENBERG: I think it calls for a conclusion of the witness.

THE COURT: Objection overruled.

MR. MAY: May I proceed, Your Honor.

THE COURT: Yes, indeed.

BY MR. MAY:

Q. Did your wife ever clean these units? A. The wife helped me clean one unit on the second floor approximately 1947 to the best of my knowledge this was the year.

Q. Excuse me. Mr. Sebold, you stated the property was acquired in 1950. Is it your testimony that she cleaned it in 1947? A. '57. I thought I said '57.

Q. Is that the only time? A. That is the only time that she has ever cleaned it. She, a couple of times did a little work on the exterior.

[36] Q. What do you mean by work on the exterior? A. Since I am bothered with asthma in recent years, I am allergic to grass and one time in the summer I just wasn't able to get any help and the grass was quite high and I asked her if she would be kind enough to

come over and mow the grass for me, it is just a little line in the front and I took the lawn mower over from my home and she agreed to it and while there I have two little bushes in the corner of the yard and I asked her to trim them for me and she did. She made no charge for this. However I gave her an extra \$5 or \$10. I don't recall.

Q. Now, how many times of these combined things did she do on these premises since the time it was acquired in '51, to the best of your recollection? A. She returned a second time at 425 New Jersey Avenue, S. E., and trimmed the same two bushes and then went over with me to another place.

Q. Well, is your testimony these three times were the, to the best of your recollection, over this whole period of time? A. To the best of my recollection. This one time in '57, helping me to finish up a little cleaning. I had a maid but she didn't show up and I wanted to get them on the market for rent and I asked her to help me finish.

[37] Q. Who collects the rents on these premises? A. I do.

Q. Did your wife ever collect the rent? A. No, sir. The wife has no knowledge of the rents or of the apartments.

Q. Who sets the rents? A. I do, sir.

Q. Who selects the tenants? A. I do, sir.

Q. Who pays the taxes? A. I do, sir.

Q. Who pays the mortgages? A. I make all the payments from my income.

Q. Who takes care of the repair of the premises? A. I do it or arrange to have it done.

Q. How are the -- who takes care of the licensing for occupancy? A. I do, sir.

Q. Now, Mr. Sebold, title to this property is in the joint name of you and your ex-wife by the entirety. Now, how did this occur?

THE COURT: What was the question?

[38] MR. MAY: The question is that the property is titled in a joint name of himself and his wife by the entirety and I was about to ask him under what circumstances did this occur.

THE WITNESS: Well, at the time I purchased this property in 1950 I did not have a will and I asked that at settlement it be conveyed in both Mrs. Sebold and my name and in this way I thought it would be better and more convenient for her should something happen to me if I passed away. I have been ill quite a bit.

Q. Did you and the Defendant have a joint checking account?

A. When, soon after we got married, to the best of my knowledge we did have a little joint checking account [39] because when we brought our first house it was a little three-bedroom row house, we had to secure everything new including all the furnishings.

Q. Excuse me, is this house you refer to one of the houses which are subject to this dispute? A. No, this is a house we traded for a house we now have out in Maryland.

Q. Now, this checking account, did you use any funds from that for these houses? A. No, this checking account was closed out after a couple of years because I never could keep any record. Occasionally when the wife would write a check she wouldn't post it in my book and I would get fouled up in my balance so I said to Mrs. Sebold that it just doesn't work out for you to be on my checking account because your bookkeeping is not accurate. And I said now, I think it would be nice if you had a checking account and I will take some out of this joint account we have and you can open one which she did at the Hamilton National Bank, she opened an account for \$100. This was about 1942 or '43 and never did we have a joint checking account again until December 30, 1960.

Q. Now, you stated you had a joint checking account on December 30, 1960. Were any monies from this joint checking [40] account open on December 30, 1960, used to pay expenses or anything relating to this property known as 425 New Jersey Avenue?

A. Counsel, I paid—

Q. Can you answer that question?

THE COURT: Don't interrupt him. Let him answer in his own way.

THE WITNESS: As I understand, you want to know if I took any money away from this joint checking account. From this joint checking account I paid utility bills and maintenance bills on my property, yes, sir.

BY MR. MAY:

Q. Did your wife ever put any money into this joint checking account? A. No, sir, Your Honor, the monies were monies that I gave her.

Q. Did your wife ever draw any checks on this joint checking account? A. Never did she write a check on this joint checking account except one time at my request. She wrote a check to pay a utility bill.

Q. What was the purpose of having this joint checking account? [41] A. Counsel I have had pneumonia six times and the sixth time was in 1960. At this time I developed what is referred to as chronic asthma. I thought I was going to pass away and in order to make it more convenient for Mrs. Sebold I changed my individual account at the National Bank of Washington to a joint account.

THE COURT: This may be a good time for us to take our usual mid-afternoon recess.

* * * * *

* * * * *

[49] BY MR. MAY:

Q. Now, Mr. Sebold, directing your attention to the property described at 1208 C Street, N. E., will you tell the Court the circumstances under which this property was purchased? A. Yes. Approximately one year after I bought the building at 425 New Jersey Avenue, S. E., I had it set up and operational. I decided that perhaps from my savings that I had saved from earnings I had a little money and maybe I could risk buying another building to help to supplement my income to maintain my family so I looked through the Washington paper and I found in the classified ad a building in Northeast Washington. I called the name that was listed in the ad and the broker described the property to me a little bit. And I said, "Well, I might be interested. When can I look at it?" This was on a Sunday. And he said, [50] "Well, I can show it to you today." So we agreed to meet at a specified time in front of the building at 1208 C Street, N. E. I looked through the building. It seemed to be something I could handle. He told me what they were asking. I don't remember now the amount it was but anyhow I made a tender offer of \$12,400. This offer was accepted. I was required to pay a \$2,000 down payment and I gave him a check at that time for \$250 and the remainder of the \$2,000 I took from my savings and paid the balance at settlement at the title company and there were first and second trusts for the balance.

Q. Now, how many units is this house? A. This property has two units. It give me an awful lot of trouble.

Q. Are they rented? A. At present they are. I had a lot of trouble with it last year.

Q. Who rents the premises? A. I am the sole rental agent and manager of the property.

Q. Who pays the taxes? A. I pay the taxes and the utility bills. I include the utility bills with the rent, that is the heat and [51] gas,

electric, water, and I pay this monthly as I get the bills from the utility companies.

Q. And you collect the rents? A. I collect the rents.

Q. Did your wife ever do anything to manage this property? A. No, counsel, the wife has never been in this property.

Q. Now, is this property titled? A. This property is also titled Randall E. Sebold and Irene A. Sebold.

Q. And what were the circumstances under which title was taken in this way? A. Well, much the same way as title was took for 425 New Jersey Avenue, S. E., due to my physical condition and still not having a will I asked that it be conveyed in my name and the wife's name as the beneficiary in case something should happen to me it would be easier for her to carry on.

Q. Now, directing your attention to the property described as 114 - 11th Street, S.E., what were the circumstances under which you purchased that piece of [52] property? A. A real estate broker called me down at my office, insurance office in the Edmunds Building one day and said, "I have a piece of property out here I think you can buy real cheap." I said, "Where is it located?" They answered my request and this was in 1955 about two years after I purchased 1208 C Street, N. E. So I set up an appointment.

THE COURT: You say 1955?

THE WITNESS: Yes, Your Honor, 1955. I set up an appointment with the real estate agent and met them at the building. We had a little trouble getting in since the building I understand was vacant about eight or nine months and we had to enter through a back window that had been broken out and after we got in we got a door open and we got through a couple of apartments but it was pretty well vandalized. The light fixtures already had been torn out and it was in pretty bad shape. The window and lights were broken out and what have you. And I could see why they were offering it so cheaply. So I made them an offer of \$12,900, I believe was the

amount and I made them this offer based on the fact that they would take a low down payment. I was contacted later by the real estate office and said that [53] my offer had been accepted.

BY MR. MAY:

Q. What was the down payment Mr. Sebold? A. To my knowledge, I am a little bit vague on this but I believe it was \$2,950 and I took back or assumed or took a first trust for \$10,000 at 5 per cent interest.

Q. How many units of this building? A. This building has four units and I also furnished most of the apartments in this building and I pay utilities, heat, gas, electric and water except for one apartment the tenant pays the electricity.

Q. Now, are all four of these rented? A. Presently all four are rented and occupied.

Q. Now, who rented these apartments? A. I rented them, sir.

Q. And who keeps them rented? A. I keep them in repair and take care of maintenance or have it done.

Q. Who collects the rent? A. I collect the rent.

Q. Who pays the taxes? A. I pay all of the maintenance bills, the repair bills and make mortgage payments on the building.[54]

Q. Did your wife ever participate in management or rental of this unit? A. The wife came to this building one time when I was in a jam and agreed to help me clean the first floor rear. I had a tenant who had moved out and had left it in pretty good condition and it wasn't too heavy work to be done so I asked my wife if she would be kind enough to come over and give me a little hand, that just needed a little vacuuming and a little arranging and she did. Between she and I we were there about two and a half or three hours.

Q. Was that the only time that you recall she was at this premises? A. To my knowledge that is the only time my wife has ever been in the building.

Q. Now, directing your attention to the property described as

431 - 7th Street, S. E., what were the circumstances under which you purchased this property? A. Somewhat similar to 7th Street only a different broker. One day at my office I got a phone call from a real estate broker and he told me that he had a piece of property that I might be interested in. I said, "What type of property is it?" And he said, "It is broken down into little units, three units."

[55] Q. Did you purchase this property? A. Yes.

Q. What were the terms of purchase? A. I took title to this property May 12, 1960, for approximately \$6,000, all cash.

Q. And where did that sum come from? A. From my savings through insurance commissions.

Q. Who keeps this property rented? A. I keep it in repair or maintenance and/or arrange to have it done.

Q. Do you collect the rents? A. Yes, I do.

Q. And who pays the taxes? A. I furnish everything in this building. I pay the taxes, the electric, gas, water as required.

Q. How is this property titled? A. This property is titled like the others, Randall E. Sebold and Irene A. Sebold as wife.

Q. And what were the circumstances under which title was taken in this matter? A. This was soon after I came out of the hospital with virus pneumonia and I now had developed this one chronic asthma and I frankly felt that I might pass away and [56] I still had no will so I went down to the title company and they asked me how I wanted to title it and I said that, well, I guess I will just title it in my name and the wife's name.

Q. Now, Mr. Sebold, taking all of these four properties together, are you in a position to tell us what the net income from all of them were in the year 1967 -

THE COURT: '67?

MR. MAY: '67.

THE WITNESS: The income, the net income from these four pieces of property was approximately \$3,500 in 1967. Now, this in-

cluded only one half a year of real estate tax which amounts to about \$750.

BY MR. MAY:

Q. What is the net income after payment of real estate taxes? A. I had paid a full year, it would have reduced it to about \$2,750 for the four pieces.

Q. Does this figure take into account mortgage payments? A. No, it does not. I pay the mortgage from my earnings.

[57] Q. Are you in a position yet to tell us what the income in 1968 was, the net income from these properties? A. Counsel, I don't have an accountant since it does require a lot of my time on maintenance of these and management of these buildings and I still have to make a living. I work on insurance commissions which have dropped off to about \$2,500 a year.

Q. Mr. Sebold, are you in a position to tell us or give us a pretty good estimate of '68 what the net income might be? A. I would, counsel, to the best of my knowledge, in 1968 also I paid only one half year of real estate taxes. I would guess that the income would be about the same as '65 in the neighborhood of \$2,500 or \$2,750. It could be less. I would rather think it would be less rather than more.

Q. What about 1966? A. In 1966, the income was in the thirties - somewhere - I am just a little bit vague on that. It was in the thirties.

Q. When you say thirties you mean \$3,000? A. I would say around - (brief pause) I'd say roughly around \$3,200.

[58] Q. Does this figure include mortgage payments or not? A. No, it never does include mortgage payments. It does not include management and it does not include any consideration for the furniture that I put in there.

Q. Now, Mr. Sebold, in 1967 what was your income from insurance business? A. Roughly the net income from insurance in 1967 was 35.

Q. Just a moment.

MR. ROSENBERG: I think the best source of that —

THE COURT: Do you object or don't you?

MR. ROSENBERG: I object, Your Honor.

THE COURT: On what grounds.

MR. ROSENBERG: I think the best source of his income would be his income tax statement.

THE COURT: Oh, no, no. This is perfectly admissible. The person's testimony of what his income is is admissible. You know many members of the bar overlook the fact that the best evidence rule so-called, applies only when you are trying to prove the contents of a document. It doesn't apply anywhere else.

You may answer.

[59] BY MR. MAY:

Q. Mr. Sebold, your income from the insurance business? A. In 1967 my net income from insurance business, 1967 was \$3,564.

Q. Are you in a position to give us some idea of '68 net? A. My net income from my insurance operations in 1968 will run approximately \$2,500.

Q. And what about 1966? A. 1966 my income was \$4,300. In round figures now, counsel a few dollars more.

Q. Do you have source from income, from interest or dividends? A. Yes, I do.

Q. What was your dividend and interest income in 1967? A. May I have that again, please.

Q. What was your interest and dividend income for the year 1967?

MR. ROSENBERG: Your Honor, I really cannot understand what is germane about this unless they are going to admit —

[60] THE COURT: Just a moment. Be a lawyer. If you object. I object on the following grounds.

MR. ROSENBERG: I object on the following grounds. Your

Honor. Unless they stipulate and are trying to prove —

THE COURT: Just a moment. State your objection in legalistic phraseology. You don't have to be pugnacious about it.

MR. ROSENBERG: Your Honor I don't think the testimony is relevant.

THE COURT: On the grounds it isn't relevant, that isn't a valid objection.

How is this relevant?

MR. MAY: This is relevant because there is a property settlement and alimony decree in Rockville.

THE COURT: I am going to allow this. Objection overruled. I am not so sure how relevant it is but it may prove to be relevant.

What was your answer?

THE WITNESS: I am sorry. May I have the question.

THE COURT: The question is what was your income in 1967 from dividends and interest.

[61] THE WITNESS: Yes. Approximately \$1,800.

BY MR. MAY:

Q. Did you have income from dividends in 1968? A. Excuse me, counsel. I would like to correct that last statement. Interest and dividends.

THE COURT: Yes.

THE WITNESS: I would like to amend that. It was about \$3,500.

BY MR. MAY:

Q. Now, did you have income from interest and dividends in 1968? A. Yes, counsel I did.

Q. What was the income, if you are in a position to give us a reading? A. I haven't made a tabulation yet. I haven't been given my forms from people who pay these interest and dividends. That is a summary of it and I haven't made one but it was less than last year. I would estimate it to be \$3,000.

Q. And what was your income from interest and dividends in the year 1967? A. As I told you that was approximately \$3,500. Both interest and dividends.

[62] Q. And '66? A. In '66 approximately the same amount.

Q. Do you have any other source of taxable income? A. No, no income other than I have a capital gain on something I might sell that is all.

Q. Now, Mr. Sebold, there is a consent decree awarding your wife certain monthly amounts plus other benefits that are not stated in exact monetary sums like you must pay the mortgage on the house in Baltimore, you must pay utilities and certain other benefits. How much do they amount to a month on top of alimony you pay Mrs. Sebold?

MR. ROSENBERG: Objection, Your Honor. I don't think it is relevant.

THE COURT: It is very relevant.

BY MR. MAY:

Q. Excuse me, Mr. Sebold. What is the monthly mortgage payment? A. On house of Belvoir Drive, \$126 a month.

Q. What utilities do you pay? A. I pay utilities in the amount of about -

THE COURT: Well, let's get a lump sum.

Why don't you go over these figures. I notice that perhaps the witness hasn't got these figures in hand. Why don't you go over them over the weekend if necessary. [63] This might be a good time for a recess. I suggested to counsel after recess for the day take up possible negotiation and discussions.

MR. MAY: Yes.

THE COURT: And if nothing happens we will go on with the case on Monday.

THE DEPUTY MARSHAL: This Honorable Court stands adjourned until 10:00 o'clock Monday morning.

* * * * *

[77] DIRECT EXAMINATION CONTINUED

BY MR. MAY:

Q. Mr. Sebold, when we adjourned Friday you were testifying as to various benefits you now give to your wife and you were instructed to review the figures so that you could briefly and accurately —

THE COURT: No, I think when we recessed the trial on Friday he was testifying as to his income, according to my notes.

BY MR. MAY:

Q. Mr. Sebold, would you state what your income was for the —

THE COURT: No, you have all that. You interrogated the witness as to what his income was from his insurance business and what dividends and interest he derived during the years from 1966 to date. That is all. You are going over the same ground again, aren't you.

MR. MAY: Thank you, Your Honor. I didn't recollect exactly where we had stopped. Is my presumption [78] correct that also we covered the net income from the houses?

THE COURT: The what? No, no that you did not cover. You covered — oh, yes, you did. You covered the net income from the four houses, the income from his insurance business and income from his dividends and interest. I have full notes on that.

MR. MAY: Thank you, Your Honor.

BY MR. MAY:

Q. Mr. Sebold, under the consent decree awarding certain benefits to your wife, one of which is payment on the mortgage on the house in which she now lives what is that amount?

MR. ROSENBERG: Objection, Your Honor. I think that goes beyond —

THE COURT: No, I am going to take the entire picture. I am going to overrule the objection.

THE WITNESS: Payments on the house, monthly including interest, taxes and principal is \$126 a month. I pay this to Perpetual Building Association.

THE COURT: Now, these are payments on which house?

THE WITNESS: That is the house at 5206 Belvoir Drive in Maryland.

[79] THE COURT: Is that the house in which your ex-wife lives?

THE WITNESS: That is the house that Mrs. Sebold now resides in.

THE COURT: In whose name is the title?

THE WITNESS: The house is jointly held, Randall Sebold and Irene Sebold.

THE COURT: Is the house in which the Defendant resides also held by tenants by the entirety?

MR. MAY: Yes, Your Honor.

THE COURT: Of course they become tenants in common I presume.

MR. ROSENBERG: Under the option of the law in Maryland.

BY MR. MAY:

Q. Now, Mr. Sebold, what is the monthly average of utility bills you pay on the house in which Mrs. Sebold lives? A. Counsel may I answer that by giving you the total breakdown for the year in addition to \$3,600 that I paid Mrs. Sebold, \$79.44 in '67 went for water.

THE COURT: Well, what is the total?

[80] THE WITNESS: Total \$564.14 for '67.

THE COURT: \$500 and -

THE WITNESS: \$64.14. And in 1966 it was \$538.74 in addition.

THE COURT: How much was it for '66?

THE WITNESS: '66 was \$538.74 in addition I might add, if I

may, the taxes had been increased about \$100 subsequent to our enforced decree. They increased from \$425 to \$500. \$422 to \$525 a year. This increased the monthly payments up to the present \$126.

THE COURT: Now, I'd like to ask counsel a question.

Do I understand correctly that in addition to the four pieces of real property involved in this action there is another piece of real property which is used as a residence by the Defendant and the title to each of the five is held as tenants by the entirety?

MR. MAY: Yes, Your Honor, that is correct.

THE COURT: But all the Plaintiff seeks is title to the four buildings and he doesn't ask title to the building in which she lives, is that correct?

MR. MAY: That is correct, Your Honor.

[81] MR. ROSENBERG: Your Honor, he didn't ask title to the fifth building because it would be outside the jurisdiction.

THE COURT: You answered my question gentlemen. Don't give me an argument when the answer is yes.

MR. ROSENBERG: Yes.

MR. MAY: May I proceed.

THE COURT: You may proceed, yes.

BY MR. MAY:

Q. And the decree also talks of medical insurance benefits. Do you maintain a medical insurance benefit for your wife? A. Yes, I have. That is included, counsel, in these figures I have just given you the total.

Q. What alimony do you pay your wife? A. \$300 a month alimony.

THE COURT: What about insurance figures, what was your question about that?

MR. MAY: The consent decree ordered him to pay medical benefits and I asked if he has been paying the medical benefits.

THE COURT: Well, in other words \$564 and \$538 is not solely

the utilities. You asked him about the utilities. Does that also include the medical benefits?

[82] What do you mean by medical benefits, insurance, Blue Cross, Blue Shield?

THE WITNESS: Well, it is not Blue Shield but it is hospitalization.

THE COURT: You have to talk so we can all hear you, we can't have private conferences. There is confusion in the record then. I want to know -- you asked him how much he was paying for utilities.

MR. MAY: I was under the misapprehension he was paying an additional amount for medical coverage.

THE COURT: That should be separated.

Now, how much are you paying for utilities?

THE WITNESS: The insurance in the total figures that I gave you for '67 was \$84. So it was minus whatever I --

THE COURT: \$64?

THE WITNESS: \$84.

THE COURT: \$84?

THE WITNESS: \$84.

THE COURT: That is for Blue Cross, Blue Shield?

THE WITNESS: Well, it's through Continental Insurance Company, the company that I work for.

[83] THE COURT: For health and medical insurance?

THE WITNESS: Hospitalization.

THE COURT: Hospitalization?

THE WITNESS: Yes, Your Honor.

THE COURT: Did the divorce decree require that?

MR. MAY: Yes, Your Honor.

BY MR. MAY:

Q. Now, Mr. Sebold, how much time would you estimate does it take to manage the four?

THE COURT: Oh, I am not interested in that. There is no doubt it takes substantial time but the exact hours and minutes I am not concerned with. Haven't you pretty well exhausted this.

BY MR. MAY:

Q. Mr. Sebold, can you tell us what is the estimated value of the four houses involved in this controversy, total value?

MR. ROSENBERG: I object, Your Honor. I don't think he is an expert to testify to what the estimated value is.

THE COURT: I think he is. He has been managing and dealing in real property. I will allow him to testify.

[84] MR. ROSENBERG: I don't think it is relevant, Your Honor.

THE COURT: I have ruled.

MR. ROSENBERG: Yes Your Honor.

THE WITNESS: Counsel may I answer the question this way. I pay for the four pieces -

THE COURT: No no no no no. If you are not able to answer the question say so. The question is can you give an opinion as to what the value, the present market value for each of those four houses is?

THE WITNESS: Yes, I can, I think, Your Honor. Just a minute. (Brief pause.) The total value, total cash value would be -

THE COURT: No, market value. Not cash value necessarily. The market value.

THE WITNESS: \$83,900.

BY MR. MAY:

Q. Now, Mr. Sebold, are there encumbrances on this property?

A. There is a mortgage on 114 - 11th Street, S. E., \$4,480. That is the only mortgage on the four pieces of property. I finished paying off the mortgage on one last year. The 425 New Jersey Avenue mortgage was completed in 1963.

* * * * *

[97] BY MR. ROSENBERG:

Q. In 1966, did you not withdraw from a joint savings account, \$6,400 which was in a former Northeast Building [98] Association?

A. No, counsel that is not true.

Q. What association did you withdraw the money from? A. 1966, counsel, none.

Q. '65, I am sorry. A. In '65, March 24, 1965, after the wife cleaned out my two operating checking accounts of \$2,350 I needed money to operate with and I had a joint account at the Metropolis Building and Loan on Capital Hill, 3d and Pennsylvania Avenue, S. E., so I went up to get that money to replace the money in the checking account and pay my taxes.

Q. Did you take \$6,400 from that joint account? A. Approximately that is what was left.

Q. When was that account opened, do you know? A. Yes. May I refer to my notes. I have the book here.

Q. Yes, sir.

THE DEPUTY CLERK: Defendant's Exhibit No. 1 marked for identification.

(Whereupon Defendant's Exhibit No. 1 was marked for identification.)

* * * * *

[102] THE COURT: Before you go on to something else I want to ask a question about the subject you brought up.

Your wife gave you, from time to time, a part of the money that she earned and you deposited it in the joint account. is that correct?

THE WITNESS: No, that is not, sir.

THE COURT: Well, I want to get the facts.

THE WITNESS: We bought this house in 1938 and bought furniture and everything at the same time and we just rented furnished apartments prior to that time and the \$6 to \$10 a day the wife made -- she wasn't very good with money.

THE COURT: When was this joint account opened?

THE WITNESS: According to this book the first \$100 was deposited -

THE COURT: When was it opened, just the date?

THE WITNESS: February 17, 1941.

THE COURT: 1941, that was before you were married?

THE WITNESS: No, no. I was married in '38.

THE COURT: You were married in '38?

THE WITNESS: Yes.

[103] THE COURT: And she worked until '43?

THE WITNESS: She worked until '43 and the most that got into this account -

THE COURT: Now, just let's get one thing at a time. Until when did she work?

THE WITNESS: She worked up until 1943.

THE COURT: That is what you testified to the other day.

THE WITNESS: And may I -

THE COURT: So that for the first five years of your marriage your wife worked?

THE WITNESS: Yes, your Honor.

THE COURT: And she turned over some of her earnings to you?

THE WITNESS: Yes.

THE COURT: And did you deposit them in the joint account?

THE WITNESS: Your Honor, according to this book there was only \$215.48 in this book through 1943. If it was any it was part of this \$215.

THE COURT: No, my question to you is, did you deposit some of the money that she earned and gave you into this joint account? Can you tell that now?

[104] THE WITNESS: I would say no, no it went for paying for furniture and some things in our new home.

THE COURT: Very well.

[CROSS EXAMINATION BY MR. ROSENBERG]

Q. You subsequently sold that house? A. I sold that house and all the proceeds went into the new house that Mrs. Sebold is now living in on Belvoir Drive. The proceeds I never touched them. The title company made the transfer of proceeds.

Q. Sir, there was a note from that house. There was a second trust which you received, was there not? A. Yes, and in addition to the proceeds that went on the new house the buyer paid \$1,600 or \$1,700 down. There was a \$5,750 second trust note payable at the rate of \$32.50 per month at 6 per cent interest until paid. The balance went on the payment, downpayment of the home on Belvoir Drive that Mrs. Sebold now lives in. This was approximately \$6,500 which was the first trust.

Q. Now, sir, I ask you again, the notes that you received as a second trust was made to you and your wife jointly, was it not? A. Yes, sir.

[105] Q. And you collected every month X number of dollars on that note? A. I collected each month X number of dollars on that note and put it on payment on Belvoir Drive.

Q. Sir, did it go into a bank account? Did a bank collect it? A. I sent the bank a check each month.

Q. Who collected the notes? A. I did.

Q. Did you collect it personally? A. No, no. The bank collected it and then when I got enough together for the house payment I made the house payment.

* * * * *

[113] THE COURT: I think it is about time you terminated your cross-examination.

MR. ROSENBERG: I was about to. Thank you, Your Honor.

THE COURT: Any redirect examination?

MR. MAY: I have no questions on redirect, your Honor.

THE COURT: You may step down.
(Whereupon the witness left the stand.)

MR. MAY: Your Honor, this closes the Plaintiff's case.

THE COURT: Very well. You may proceed, Mr. Rosenberg.
EVIDENCE ON BEHALF OF THE DEFENDANT

MR. ROSENBERG: Your Honor, I would like to move at this point to dismiss the Complaint of the Plaintiff on the testimony adduced hereto. They have not proven a prima facie case.

THE COURT: Motion denied.

MR. ROSENBERG: Thank you.

RAMONA L. WIGGINGTON

[114] DIRECT EXAMINATION

BY MR. ROSENBERG:

Q. State your name. A. Ramona Lee Wiggington.

THE COURT: No, no. Everybody inside the bar has to hear what you are saying. The reporter has to record everything you say. You have to speak slowly, distinctly, deliberately and loudly, like I am doing so that we can all understand you.

You can use the microphone if you wish. Now, would you mind stating your name?

THE WITNESS: My name is Ramona -

THE COURT: What is your name?

THE WITNESS: Ramona Lee Wiggington, W-I-G-G-I-N-G-T-O-N (spelling) it is pronounced Wiggington, Your Honor.

THE COURT: Thank you.

BY MR. ROSENBERG:

Q. How are you related to the Plaintiff and the Defendant in this case? A. I am their daughter.

Q. Now, Mrs. Wiggington, you lived with the Plaintiff and the Defendant from 1938 until what year? A. 1957 I believe.

[115] Q. Now, did you see your mother? Can you tell us about the circumstances regarding the money your mother earned?

THE COURT: No, no. You have to ask specific questions and not invite a lecture.

BY MR. ROSENBERG:

Q. Mrs. Wiggington, did your mother work while you were young?

A. Yes, she did. My mother worked when I was young and she worked up until she was about eight months pregnant with my brother.

Q. When was your brother born, do you recall? A. Well, my brother was five years younger than I.

THE COURT: Well, we have enough on the record that it was 1943.

THE WITNESS: Right. So that makes it '43. In 1943.

BY MR. ROSENBERG:

Q. Did you see what your mother did with the money she received from the job she worked at? A. Well -

THE COURT: The answer is yes or no.

[116] THE WITNESS: Yes.

BY MR. ROSENBERG:

Q. And what happened to the money that she earned? A. My father handled all the money. She gave my father the monies that she had.

Q. Was there any reason for this? A. The reason—well, the reason being this is just sort of the agreement that they had. They worked together and when mother worked and made money she gave it to him because he was to put the money, he always said the money was to go for the family, that it was for their savings and for their investments and this is why she paid him the money because she always felt that he had a better head as far as business was concerned, out in the business world so she gave him everything.

THE COURT: Just a moment. Suppose you come forward. Do not address the Court from the other side of the bar.

MR. MAY: Excuse me, Your Honor. I would like to voice an objection to this.

THE COURT: On what grounds?

MR. MAY: Between 1938 and '43 when Mrs. Sebold, the Defendant, worked, this witness was between zero and five years old.

[117] THE COURT: Will you please tell me what is the ground of your objection and state it in legalistic phraseology.

MR. MAY: I don't think that this witness was in a position at that age to testify to an agreement between her parents and use of money.

THE COURT: Objection sustained. She cannot testify to things that happened when she was five years old, you know.

BY MR. ROSENBERG:

Q. Now, Mrs. Wiggington, were there boarders in the house? A. Yes, there were boarders in the house until I was about eight or nine years old.

THE COURT: Were these boarders or roomers?

THE WITNESS: Is there a difference?

THE COURT: Oh, yes, a boarder is a person who takes—

THE WITNESS: Oh, they were paying guests. They lived there and paid money to my mother.

THE COURT: No, just a minute. Just confine yourself to answering questions. There were roomers in the house until when?

* * * * *

[128]

IRENE H. SEBOLD

* * * * *

[139]

CROSS-EXAMINATION

* * * * *

[143] BY MR. MAY:

Q. Now, Mrs. Sebold, did you ever show any of the prospective tenants to this property a lease?

THE COURT: Now, there is no claim. I didn't understand that she claimed that she showed any property to anybody. So do not ask a negative something concerning which there was no testimony.

MR. MAY: May I have a moment with my client.

THE COURT: Surely, take whatever time you need.

(Brief pause.)

MR. MAY: Your Honor, I have no further questions.

THE COURT: Very well, you may step down.

MR. ROSENBERG: Your Honor that concludes our case except for the request that if Your Honor agrees with us on the accounting—

THE COURT: Well, wait a minute. You are going too fast. You rest?

MR. ROSENBERG: I rest, Your Honor.

THE COURT: Is there any rebuttal?

MR. MAY: Yes, Your Honor.

THE COURT: You may put on your rebuttal.

MR. ROSENBERG: Your Honor we received all—the pretrial examiner required notice of witnesses to be [144] sent to us we received no notice or notice of any witness to be utilized by the Plaintiff.

THE COURT: Now, just a moment. Swear the witness first so the witness will not be standing around then I will hear you.

Whereupon,

MARIE AGNES DEESE

was called as a rebuttal witness by counsel for the Plaintiff, was first duly sworn and testified as follows:

[145] THE COURT: You may proceed.

DIRECT EXAMINATION

BY MR. MAY:

Q. Will you please state your name? A. My name is Agnes Deese.

THE COURT: What is your name?

THE WITNESS: Deese, D-E-E-S-E (spelling)

THE COURT: Do not yell in the microphone.

THE WITNESS: I'm sorry, Your Honor.

THE COURT: And your first name, madam?

THE WITNESS: Marie.

THE COURT: Now I will hear you.

MR. ROSENBERG: The pre-trial order called for a letter telling both sides who they were going to use as witnesses.

THE COURT: That has always been construed as not applicable to rebuttal witness, only to direct witness.

MR. ROSENBERG: Thank you, Your Honor.

BY MR. MAY:

Q. What is your address? A. 6530 Little Falls Road, Arlington, Virginia.

Q. Are you related to the plaintiff in this action? [146] A. I am his sister.

Q. Are you familiar with the properties that are subject to this litigation? A. I am.

Q. And have you ever been to these properties? A. I have been to all of them.

Q. How often have you been to them? A. Every time there is a vacancy within the last eight to ten years I have taken care of cleaning.

THE COURT: You have answered the question.

THE WITNESS: I'm sorry, Your Honor.

BY MR. MAY:

Q. And tell the Court exactly what you do in relation to these properties.

THE COURT: How is all this relevant, Mr. May?

MR. MAY: Your Honor, Mrs. Deese is going to testify that she has cleaned each of the apartments during each vacancy over a period of 10 years. I have witnesses who have seen her present; I have witnesses who were on some of the premises.

THE COURT: I understand all of that. I didn't ask what she was going to testify to.

How is that relevant? Does she clean the [147] apartments.

MR. MAY: It is relevant because it will show—the defendant herein has testified that the only time the apartments were cleaned were when they were vacant.

THE COURT: No. She did not testify to that. The defendant testified that when the apartments were vacated she cleaned them. She didn't testify that they were not cleaned at any other time. At least I didn't so understand.

MR. MAY: Your Honor, my understanding was that she testified that she, when tenants were, went into the premises they were not cleaned, only when they were vacant.

THE COURT: No, she testified that she cleaned them only when tenants vacated them. Anyway, how is that relevant to the issue?

MR. MAY: Because—

THE COURT: —(continuing) How much work the defendant did is relevant. How much work somebody else did is not.

MR. MAY: I am trying to establish that this defendant did not work, that all these witnesses—

THE COURT: Very well.

MR. MAY: —(continuing) I'm bringing in, [148] bringing forward are going to testify that they did the cleaning and in some cases they will testify during the period—

THE COURT: You say "all" these witnesses. How many witnesses are there going to be?

MR. MAY: I have three witnesses who have been on the properties cleaning when they were vacated.

THE COURT: Well, I'm not going to hear that testimony. I think this cleaning business is trivia.

MR. MAY: Well, Your Honor, I would like to at least tender this evidence.

THE COURT: Well, make your proffer.

MR. MAY: Your Honor, I would like to proffer the oral testimony of three witnesses.

THE COURT: No, no. Each witness separately.

MR. MAY: Mrs. Deese, sister of the plaintiff who would testify that she cleaned these apartments over the last ten years each time they were vacated. I would like to tender the testimony of Mr. Randolph Sebold, Jr., the son of the plaintiff and defendant, who would testify that he has helped Mrs. Deese on many occasions over the last eight years clean these apartments. Both of these witnesses will testify except for one occasion they did not see the defendant on the premises. I would like to tender the testimony of Mr. William [149] Lang who has been the caretaker and has all the keys to all the apartments for 13 years at 113 Eleventh Street, Northeast and he has never seen Mrs. Sebold present. Three are present and all of these witnesses are present in the courtroom.

* * * * *

7-6

In the
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

NO. 23,014

United States Court of Appeals
for the District of Columbia Circuit

FILED JUL 24 1969

Randall E. Sebold, Sr., Appellee,

v.

Irene H. Sebold, Appellant.

Nathan J. Paulson
CLERK

On Appeal From a Judgment of the District Court for the
District of Columbia

BRIEF FOR APPELLANT

Harvey Rosenberg
1001 Spring Street, Suite 124
Silver Spring, Maryland 20910
Attorney for Appellant

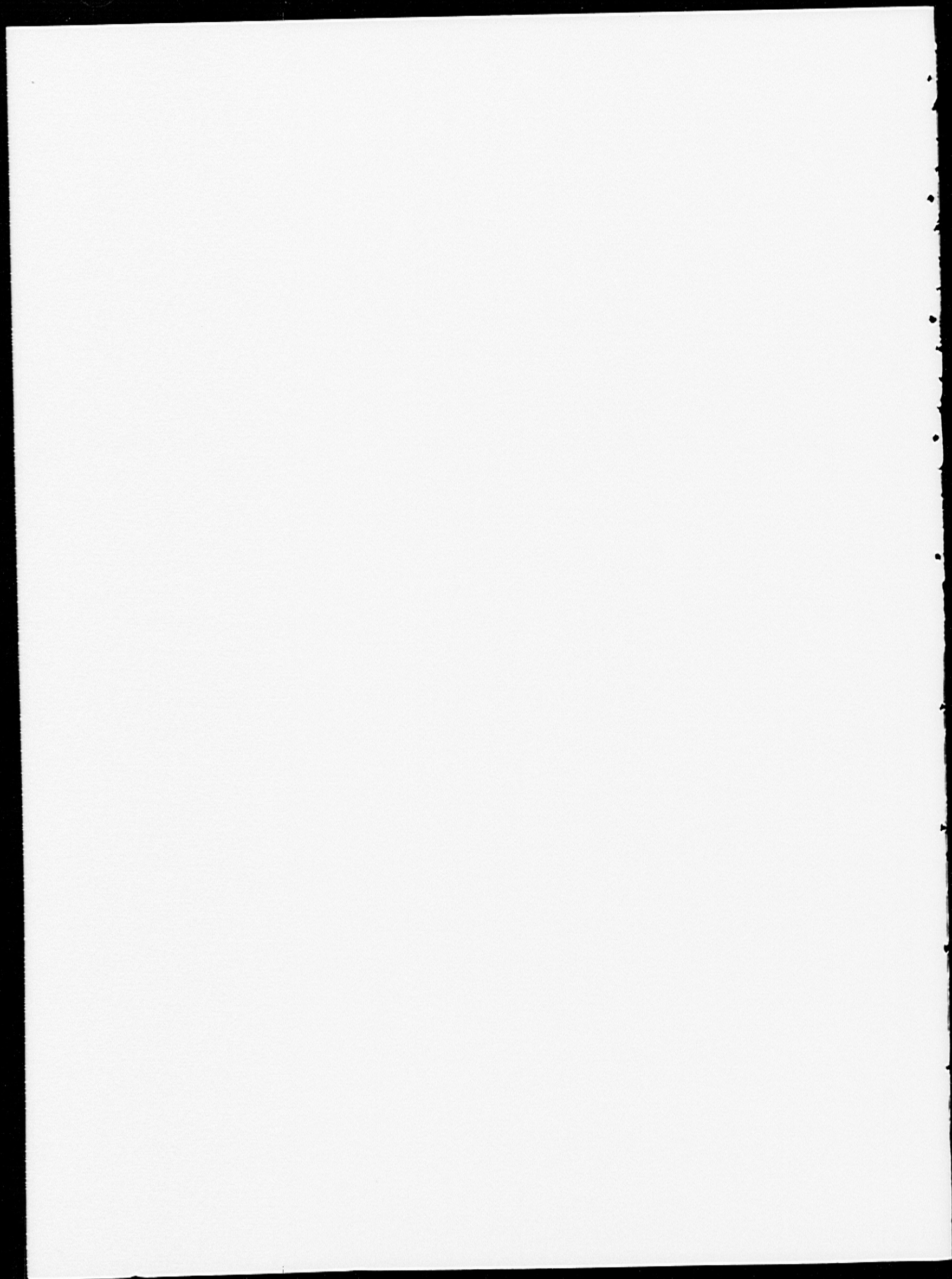


TABLE OF CONTENTS

	Page
I. Statement of Issues Presented	1
II. Jurisdiction	3
III. Statement of the Case	3
IV. Summary of Arguments	4
V. Argument	5
1. The Jurisdiction of the Court	5
2. Alternative Jurisdiction of the Court	8
VI. Conclusion	13

TABLE OF AUTHORITIES

Court Decisions:

<u>Hipp v. Hipp</u> , 191 F. Suppl. 299 (1960)	8
<u>Lundregan v. Lundregan</u> , 76 A. 2d 790 (1962).	8
<u>Marshall v. Marshall</u> , 81 App. D. C. 404, 160 F. 2d 6 (1947).	8
<u>Oxley v. Oxley</u> , 81 App. D. C. 346, 159 F. 2d 10 (1946)	8
<u>Posnik v. Posnik</u> , 160 A. 2d 804 (1960)	8
<u>Scholl v. Scholl</u> , 72 F. Suppl. 823 (1947).	5, 7, 8, 13
<u>Schultzer v. Schultzer</u> , 300 F. 2d 917 (1962).	8, 9, 11, 12
<u>Wheeler v. Wheeler</u> , 83 App. D. C. 193, 188 F. 2d 31 (1951)	8

Statutes:

Article IV. Section 1. Constitution of the United States	13
--	----

Index Continued

	Page
Title II. Section 1141 (a) (9) of the District of Columbia Code . . .	7
(1967)	
Title II. Section 1101 of the District of Columbia Code (1967) . . .	6
Title II. Section 2901 of the District of Columbia Code.	6,7
Article 16. Section 29 of the Annotated Code of Maryland	5

IN THE
UNITED STATES COURT OF APPEALS
For the District of Columbia Circuit

No. 23,014

Randall E. Sebold, Sr., Appellee,

v.

Irene H. Sebold, Appellant.

On Appeal From a Judgment of the District Court for the
District of Columbia

BRIEF FOR APPELLANT

I. STATEMENT OF ISSUES PRESENTED

1. Can the Court divest a party of property held as tenants in common when the party being divested of the property was the non-erring spouse and was granted an absolute divorce by a Court of competent jurisdiction?
2. Can the Court take property which is held as tenants in common from the appellant (the former wife) when she did not breach the implied covenant of a faithful observance of her marriage vows?

3. After a divorce of parties who have been tenants by the entireties do they become tenants in common subject to defeasance?

4. Can the Court under the circumstances herein consider the issue of whether or not another court provided adequate alimony to one of the spouses when the sole issue is partition of the property between tenants in common?

5. Does the Court have jurisdiction to review the actions of a court of a sister jurisdiction?

6. Can property to which both parties contributed be transferred by the Court to one of the parties without partition?

7. Is not the proper remedy in this case a suit for partition of the properties held by tenants in common?

8. Can a person who has kept her marriage vows be penalized by the Court and have her property taken away from her?

9. Has the Court given full faith and credit under Article 4, Section 1. Constitution of the United States, to the equity decree of the Circuit Court for Montgomery County, Maryland, granting a divorce a vinculo matrimonii to appellant herein?

This case has not previously been before this Court.

II. JURISDICTION

This is an appeal from a judgment entered after a trial, said judgment having been entered by the United States District Court for the District of Columbia on the 22nd day of January, 1969. The District Court's jurisdiction was invoked by Title 28, Section 2201 of the United States Code; Title 11, Section 521 of the District of Columbia Code (1961), other applicable statutes and the general equity powers of the Court. Jurisdiction of this appeal arises under Title 11, Section 321 of the District of Columbia Code (1967).

III. STATEMENT OF THE CASE

Irene H. Sebold, appellant and Randall E. Sebold, Sr., appellee, who were formerly husband and wife, were divorced on the 13th day of September, 1967 in Montgomery County, Maryland. The decree was granted to Mrs. Sebold, the defendant and counter-plaintiff, on the grounds of constructive desertion. During their marriage, Mr. and Mrs. Sebold acquired, as tenants by the entireties, the following properties, on or about the following dates:

425 New Jersey Avenue, S. E.	May 16, 1950
1208 C Street, N. E.	March 6, 1951
114 11th Street, S. E.	March 23, 1955
431 7th Street, S. E.	May 13, 1960
5206 Belvoir Drive, Glen Mar Park, Maryland	December, 1951

All of these properties (except 5206 Belvoir Drive) are located in the District of Columbia. The properties at all times have been listed in the joint names of appellant and appellee and the properties

were purchased and maintained from the joint endeavors of the parties while they were husband and wife. Some of the properties were purchased from the income derived from previously acquired property and/or the sale of jointly held property.

The appellee (plaintiff below) filed suit in the United States District Court for the District of Columbia asking that he be declared sole owner of the properties in question and asking the Court to convey title to all properties to him. The appellant (defendant and counter-plaintiff below) claims as a tenant in common one-half ownership in all properties and demands an accounting from the appellee of the rental income from the properties from the date of the 13th day of September, 1967 i. e. the date that the Circuit Court for Montgomery County entered the decree of divorce.

IV. SUMMARY OF ARGUMENT

1. The Court should have treated the instant case as one for a partition of property upon petition of a tenant in common or dismissed same.
2. The Court did not have the power to award property formerly held by husband and wife as tenants by the entirety and held by them after divorce as tenants in common to the party who was the wrongdoer in the divorce action and divest the innocent party to whom the divorce was awarded when the divorce was not granted in the District of Columbia.
3. Absent a showing that the party who seeks clear title to all the jointly owned property owned the property before marriage and was the

innocent party to the divorce, and that the other party breached her marriage vows and had never contributed anything to the property. the party is not entitled to the property but only to a partition of the property as a tenant in common.

4. The Court could not properly consider the amount of alimony or property awarded to the wife as a result of her obtaining a divorce in another jurisdiction as a factor in awarding the property to the husband.

V. ARGUMENT

1. The Jurisdiction of the Court

According to the doctrine enunciated by the United States District Court for the District of Columbia in Scholl v. Scholl, 72 F. Suppl. 823 (1947) unless an action is brought by a tenant in common for a partition of property and accounting for rents and profits, the United States District Court cannot award title to one of the tenants. Just as in Scholl v. Scholl, supra, the parties here, both residents of another jurisdiction (Maryland) were divorced in a Maryland Court, the wife being awarded the decree on the grounds of constructive desertion. The Maryland Court, under the provisions of Article 16, Section 29, Annotated Code of Maryland had no jurisdiction over the real property owned by the husband and wife in the District of Columbia as tenants by the entireties. Mr. and Mrs. Sebold after the divorce Scholl v. Scholl, supra, became tenants in common of the property

as of the date of the divorce.

As the fact situation in the instant case is identical to that in Scholl v. Scholl, *supra*, it should be controlling in this case. The factors considered by the Court were:

1. The husband and wife were non-residents of the District of Columbia.
2. The husband and wife were owners of property in the District of Columbia as tenants by the entirety during their marriage.
3. The wife obtained a divorce in Florida.
4. The former husband and wife became tenants in common of their property in the District of Columbia.

In any subsequent proceeding involving the properties which were the subject of the suit below, the parties can only seek a judgment of a Court in the District of Columbia in a suit for partition and accounting under Title 16, Section 2901, District of Columbia Code.

Thus, according to the operation of law, domestic considerations, alimony awarded by the foreign court and the prior status of the parties as tenants by the entirety are not germane to the issue of the disposition of the property.

The suit below brought by Mr. Sebold was apparently brought on the supposition that if a Court of the District of Columbia can assume jurisdiction over the properties of the parties to a divorce suit filed in the District of Columbia under Title II, Section 1101, District of Columbia Code the Court can, in the same manner, assume jurisdiction over

property owned by parties who were formerly tenants by the entireties and became tenants in common by operation of law when they were divorced in Maryland. According to the doctrine enunciated in Scholl v. Scholl, supra, the basis for any suit regarding the disposition of the property should be laid under Title II, Section 2901, District of Columbia Code. Under this Statutory Authority, the United States District Court for the District of Columbia may decree a partition of the realty or decree of sale and divide the monies resulting from the sale and that is its sole authority.

During trial, counsel for Mr. Sebold and the Court conceded that the parties had become tenants in common on the date of the divorce. [Tr. p. 18, lines 16-22, p. 22, lines 1-10, p. 25, lines 3-11, p. 179, lines 5-23] Under the rule of law applicable to the case, the Court did not have the power to grant title of a tenancy in common to one of the tenants while divesting the other of all right, title and interest. The only method the Court could have used was to deny full faith and credit to the Maryland divorce and to treat the tenancy as something other than a tenancy in common.

Various cases arising in the District of Columbia relied on by the Courts to adjudicate real property rights do not deal with this precise issue. In all the cases where one party was divested of a right to real property, the Court acted under the authority of Title II, Section 1141 (a) (9) of the District of Columbia Code, which gives the Domestic Relations Branch of the District of Columbia Court of General Sessions the right to

adjudicate real property rights between the parties to a suit laid under that title. In this context, see Hipp v. Hipp, 191 F. Suppl. 299 (1960), Posnik v. Posnik, 160 A. 2d 804 (1960), Oxley v. Oxley, 81 App. D. C. 346, 159 F. 2d 10 (1946), Marshall v. Marshall, 81 App. D. C. 404, 160 F. 2d 6 (1947), Wheeler v. Wheeler, 83 App. D. C. 193, 188 F. 2d 31 (1951), Lundregan v. Lundregan, 76 A. 2d 790 (1962). All of these cases awarding properties to one or the other tenants were awards made as part of a suit for divorce brought in the District of Columbia.

2. Alternative Jurisdiction of the Court

The only exception to the rule enunciated in Scholl v. Scholl, supra, was made by this Honorable Court in the case of Schultzer v. Schultzer, 300 F. 2d 917 (1962). In that case, the Court awarded all the real property owned by a former husband and wife in the District of Columbia to the husband. The equitable remedy given by the Court to the husband was based on the following considerations, none of which are present in the instant case:

1. The wife sued for an accounting in the District of Columbia while the parties were still married. Jurisdiction attached at that time, but judgment was stayed pending the outcome of a divorce suit by the Montgomery County Circuit Court, Maryland.

2. The properties in question were solely owned by the husband before the marriage.

3. The properties became tenancies by the entireties, giving the

wife a joint ownership, solely upon consideration of a covenant of faithful performance of her marriage vows.

4. The wife did not observe her marriage vows.

5. The husband obtained the divorce in Maryland on the grounds of adultery.

6. At no time before, during, or after the marriage did the wife make any contribution towards the acquisition or upkeep of the properties.

The only benefit allowed to the wife was an accounting of the rents and profits of the tenancies from the date requested in her original suit for accounting to the date of the divorce. As of the date of divorce, she was divested of all rights to the property that she had originally brought under the jurisdiction of the Courts of the District of Columbia by the nature of her suit for an accounting.

The exception to the general rule carved out in Schultzer v. Schultzer, supra, cannot operate in the instant case to divest Mrs. Sebold of her interest in the properties. The differences in jurisdiction as well as the facts of the two cases mitigate against such a result.

Mrs. Sebold never instituted suit for any action in conjunction with partition, accounting or other procedure with regard to these properties during the course of her marriage while she held an interest in them as a tenant by the entirety in the District of Columbia. The properties became the subject of suit after divorce when Mr. Sebold, now a tenant in common, sued to obtain title.

Secondly, the properties in question were all acquired during the course of the marriage. Any possible interest before the marriage was the result of the contributions of both husband and wife before the marriage.

Third, the properties were actually each acquired jointly by husband and wife during the course of the marriage; they were not bestowed after marriage.

Fourth, even had the properties been held by Mrs. Sebold with her husband upon condition that she faithfully observe her marriage vows, that consideration still exists and was faithfully performed. There is not and never has been any evidence that she breached her marriage vows.

Fifth, she was the party who obtained the divorce from her husband on the grounds of his constructive desertion--his breach of their marriage vows.

Sixth, the record of trial is replete with evidence of her contributions to the acquisition and upkeep of the properties. Mrs. Sebold had worked before her marriage and turned over some of the funds she earned to Mr. Sebold for their marriage future. [Tr. p. 129, lines 19-23, p. 130, lines 10-11, 16-23, p. 131, lines 1-2] Mrs. Sebold had worked outside her home prior to the acquisition of any of the properties [Tr. p. 32, lines 22-23, page 33, lines 1-5, p. 115, lines 7-15, 19-22, pages 116, lines 1-15] Even though Mrs. Sebold did not work outside her home during

the later years of the marriage, her contributions added to the production of joint property according to the Court. [Tr. p. 48, lines 17-19] During the marriage the parties acquired sums of money which were held in a joint bank account [Tr. p. 97, lines 22-23, p. 98, lines 1-14] When Mrs. Sebold earned monies, she gave her husband her money. [Tr. p. 101, lines 5-12, p. 131, lines 3-15] Mrs. Sebold kept boarders in their home and gave the money to her husband [Tr. p. 105, lines 21-24, p. 106, lines 1-4, p. 117, lines 11-23, p. 118, lines 12-15, p. 119, lines 11-15, p. 121, lines 2-5, page 133, lines 21-24, p. 134, lines 1-2, 11-22] Mrs. Sebold assisted her husband with the insurance business he ran from his home [Tr. p. 121, lines 12-20, p. 135, lines 8-18] She helped to rent the properties they owned together. [Tr. p. 21, lines 21-23, p. 122, lines 1-16, p. 126, lines 3-20, p. 135, lines 19-23, p. 136, lines 1-6] The trust notes from the properties sold by the parties were held in both names, but the money was collected by Mr. Sebold. [Tr. p. 132, lines 10-15, p. 133, lines 7-14, lines 19-20] While the properties were held by both parties, certain work, such as cleaning the apartments, was done by Mrs. Sebold [Tr. p. 136, lines 7-16, p. 137, lines 2-14, p. 138, lines 15-19, p. 139, lines 3-11, 18-23, p. 140, lines 1-9, p. 141, lines 13-17] All of the properties were purchased and had deeds of trust placed on them. Both parties were liable for the deed of trust notes for each of the properties.

Furthermore, under the Schultzer doctrine, the adulterous wife who

was divested of her property as of the date of the husband's divorce was entitled to an accounting as prior to the divorce, as of the date of her first request for accounting under the original suit which gave the United States District Court jurisdiction. Any sums she had received as support pendente lite could not be set off against her share of the rentals. [Schultzer v. Schultzer, supra, at 919] Under this doctrine, Mrs. Sebold would be entitled to an accounting from the 20th day of October, 1965, the date of her formal separation [Tr. p. 184, lines 9-13, 19-21] Not only is Schultzer binding on the Court as enunciating the factors that must be met before one party can be divested, and the conditions that apply to an accounting, but the Court below determined that that case was binding and Counsel for Mr. Sebold agreed. [Tr. p. 193, lines 2-14] Therefore, if the Court considers Schultzer v. Schultzer, supra, binding, in the absence of jurisdiction before the divorce, conveyance after marriage of property acquired prior to marriage and in the presence of a faithful performance of the marriage vows by the wife and her extensive contributions to the jointly acquired and jointly owned properties, even under any general powers in equity the Court below had no power to arbitrarily divest Mrs. Sebold of her share in the properties. All the Court had the power to do was to permit an accounting regarding her interests as of the date of the separation and partition of the property between Mr. and Mrs. Sebold as tenants in common. The consideration of alimony or support as awarded by the

Maryland Court and the consideration of property determinations by that Court denied full faith and credit to the decree of Maryland Court in violation of Article IV, Section 1, United States Constitution and Scholl v. Scholl, supra.

CONCLUSION

Wherefore, for any and/or all of the foregoing reasons, appellant prays that this Court set aside the verdict and reverse with instructions to dismiss the Complaint and/or that this Honorable Court set aside the verdict and reverse and remand for a new trial.

Respectfully submitted,

Harvey Rosenberg
1001 Spring Street, Suite 124
Silver Spring, Maryland 20910
Attorney for Appellant